



Dustin Johnson, Chair
Gary Hanson, Vice Chair
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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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September 12, 2007

Patricia Van Gerpen
Executive Director, Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

VIA ELECTRONIC FILING

Re: GD07-001

Dear Ms. Van Gerpen:

Please file this correspondence in the above docket in response to Ms. Bartling's Motion for Reconsideration. Staff does not object to giving Ms. Bartling's client yet another opportunity to be heard. It is clear however that Ms. Bartling does not understand the Public Utilities Commission process and thus missed the public meeting at which the Commission considered Staff's Motion for Summary Judgment. Staff therefore, objects, to the basis of Ms. Bartling's Motion and wishes to assure the Commission that both Ms. Bartling and her client were given adequate notice. Ms. Bartling simply did not take the time to read the Scheduling Order or to understand applicable Administrative Rules and thus missed the public meeting at which Staff's Motion for Summary Judgment was considered.

Although I did speak with Ms. Bartling before the August 28, 2008 Commission Meeting it was to follow up on discovery requests that were several months beyond the due date. Ultimately, she responded to discovery after a final telephone call on August 17, 2007. It was in my final phone call to Ms. Bartling that I stated my intention to place the Motion for Summary Judgment on the Agenda for August 28, 2007. At this time Ms. Bartling indicated she may have a conflict and would advise me if she could not attend the meeting on August 28. I informed her that in the event of a conflict, she should file a motion to delay or advise Staff in some way of the conflict.

Ms. Bartling has, thus far, failed to comply with the PUC filing and correspondence rules and now requests to be removed from e-mail notice. Staff will accommodate Ms. Bartling's apparent technical difficulty. Staff argues, however, that she cannot use "lack of notice" as an excuse for rehearing this matter. Ms. Bartling failed to advise the Commission of any such technical difficulty and now needs reason to request rehearing of Staff's Summary Judgment Motion. Administrative Rule 20:10:01:02.05 clearly states, "Unless otherwise allowed, any document filed with the commission shall be filed electronically as a pdf file by accessing the commission's website." Additionally, Administrative Rule 20:10:01:09:01 states, "The commission shall serve all documents electronically unless a person is unable to receive documents electronically, a document may not practicably be transmitted electronically, or the commission does not have the person's email address." Staff, according to our rule, E-mailed Ms. Bartling the Agenda and further sent a hard copy to her client. Please see attached, a copy of the e-mailed agenda. Both Ms. Bartling and her client received notice according to the applicable rule.

Staff was not alarmed when Ms. Bartling failed to call in or appear at the Commission meeting on August 28, 2007. Although she and her client received notice, they have not appeared at any previously scheduled meeting in which action was taken on this docket. Ms. Bartling failed to file a Motion for Summary Judgment, and failed to respond to Staff's Discovery request according to the scheduling order. Ms. Bartling has not been an active participant in this docket. Staff did not, therefore, find it highly unusual that neither Ms. Bartling nor her client chose to participate in the meeting of August 28 2007 and did not take any special precautions or treat Ms. Bartling any different than other parties involved in a PUC docket either before or after the August 28 meeting.

Finally, Administrative Rule 20:10:01:30.01 is the rule addressing an Application for rehearing or reconsideration and states, "An application for a rehearing or reconsideration shall be made only by written petition by a party to the proceeding. The application shall be filed with the commission within 30 days from the issuance of the commission decision or order. An application for rehearing or reconsideration based upon claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the ground or error. An application for rehearing or reconsideration based upon newly discovered evidence, upon facts and circumstances arising subsequent to the hearing, or upon consequences resulting from compliance with the decision or order, shall set forth fully the matters relied upon. The application shall show service on each party to the proceeding." Ms. Bartling's Motion does not appear, in any way to be based upon the rule for rehearing, rather, she relies upon her "lack of notice" belief. Staff argues, however, that she and her client both received notice, they should have been aware of the Summary Judgment Argument date, and neither advised the Commission in any way that the August 28 date didn't work. Furthermore, Ms. Bartling did not advise Staff of any technical computer problems prior to the August 28, 2007 Commission Meeting. The PUC has rules of practice in place just as every other Agency or Court does, and those practicing in front of the PUC must learn them and follow them.

In conclusion, though Staff does not wish to deprive LW Sales of its time in front of the Commission due to an oversight by its lawyer. Staff does, however, adamantly reject Ms. Bartling's depiction of the situation and Staff's behavior.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Kara Semmler', written in black ink.

Kara Semmler

cc. Kari Bartling VIA E-MAIL AND US MAIL

Kolbo, Delaine

From: Kolbo, Delaine
Sent: Thursday, August 23, 2007 8:06 AM
To: Sheryl Brown (whitesd@hcpd.com); Alan Glover (afg1@brookings.net); Kari A. Bartling (tdlaw@nvc.net); Dean Cowling (dean_cowling@transcanada.com); Daniel S. Kuntz (dan.kuntz@mduresources.com); Sandra Hoglund Hanson (shanson@dehs.com); Roy A. Wise (rwise@rwwsh.com); Mark D. O'Leary (olearyoffice@midconetwork.com); Mark J. Arndt (marndt@mayjohnson.com); Jason W. Shanks (jshanks@mayjohnson.com); Paul H. Linde (paul@schafferlawoffice.com); John W. Burke (jwburke@mtnlaw.com); Jeff Baill (jbaill@yostbaill.com); Richard J. Helsper (rjh1@brookings.net); Denise Hargan (denise.hargan@echostar.com); Nancy Vogel (nancy_vogel@mml.net); Gene DeJordy (gene.dejordy@alltel.com); Steve Meyer (smeyer@swiftel.net); Cassandra Guinness (cassandra.guinness@frontiercorp.com); Kevin D. Manwarren (kevin.manwarren@qwest.com); Greg Diamond (gdiamond@covad.com); Julie.kline@neustar.biz)
Subject: SDPUC Agenda of the Commission meeting to be held 8/28/07.

South Dakota Public Utilities Commission Meeting

Tuesday, August 28, 2007, at 8:30 A.M.

State Capitol Building, Room 412

Pierre, South Dakota

NOTE: If you wish to join this meeting by conference call, please contact the Commission at 605-773-3201 by 5:00 p.m. on August 27, 2007. Lines are limited and are given out on first come/first serve basis, subject to possible reassignment to accommodate persons who must appear in a proceeding. Ultimately, if you wish to participate in the Commission Meeting and a line is not available you may have to appear in person.

NOTE: To listen to the Commission Meeting live please go to the PUC's website

www.puc.sd.gov and click on the LIVE button on the home page. The Commission requests that persons who will only be listening to proceedings and not actively appearing in a case listen via the webcast to free phone lines for those who have to appear. The Commission meetings are archived on the PUC's website under the Commission Actions tab and then click on the LISTEN button on the page.

NOTE: Notice is further given to persons with disabilities that this Commission meeting is being held in a physically accessible place. If you have special needs, please notify the Commission and we will make all necessary arrangements.

AGENDA OF COMMISSION MEETING

Administration

1. **Approval of the Minutes of the Commission Meetings Held on May 22 and June 26, 2007, and the Ad Hoc Meeting Held on August 14, 2007. (Staff: Demaris Axthelm)**

Consumer Reports

1. **Status Report on Consumer Utility Inquiries and Complaints Received by the Commission. (Staff Attorney: Deb Gregg)**

Electric

1. **EL07-023 In the Matter of the Filing by Otter Tail Power Company for Approval of Tariff Revisions. (Staff Analyst: Keith Senger, Staff Attorney: Karen Cremer)**

On August 1, 2007, Otter Tail Power Company filed for approval to revise its tariffed Summary of Contracts with Deviations. The existing contracts with the Cities of Summit, Grenville, Corona, Strandburg, Ortley, Stockholm and Twin Brooks expired on June 1, 2007. Otter Tail states the new agreements do not contain any deviations from Otter Tail's currently filed tariff and therefore requests that references to the contracts with the Cities listed be removed from the Summary of Contracts with Deviations.

TODAY, shall the Commission Approve the Tariff Revisions?

2. **EL07-024 In the Matter of the Filing by the City of White for Approval of its Revised Service Territory as a Result of Annexation. (Staff Analyst: Nathan Solem, Staff Attorney: Kara Semmler)**

On August 2, 2007, the City of White filed a petition to modify electric territory boundaries between the City of White and Otter Tail Power Company (OTP) as a result of annexation of OTP territory by the City of White. Resolution 2007-6 annexed Blocks Two (2), Three (3) and Four (4) of the Ballpark Addition in the SW1/4 of Section 12, T111N, R49W of the 5th P.M, Brookings County, South Dakota and Resolution 2007-9 is an offer to purchase from OTP the electric utility and service rights within the above annexed area per SDCL 49-34A-49. Otter Tail Power Company (Otter Tail) filed a Petition to Intervene on August 20, 2007. On August 21, 2007, Otter Tail filed a Motion to Dismiss.

TODAY, shall the Commission Grant Intervention to Otter Tail Power Company? AND, shall the Commission Grant the Motion to Dismiss?

Grain Dealer

1. **GD07-001 In the Matter of LW Sales/LW Seed's Failure to Obtain Necessary Licensure Prior to Operation as a Grain Dealer in the State of South Dakota. (Staff Analyst: Jim Mehlhaff, Staff Attorney: Kara Semmler)**

In October of 2006 the PUC Warehouse Division received a complaint that LW Sales Inc. had violated SDCL 49-45-1 by purchasing grain for the purpose of reselling it. In an informal interview with the President of LW Sales Inc. the transactions were confirmed, but were presented as isolated incidents that would not be repeated. A letter advising LW Sales Inc. of the law and warning them that further violations may result in formal action was sent to the President of LW Sales Inc. on November 1, 2006. On February 15, 2007 the PUC Warehouse Division received a second complaint that LW Sales was continuing to purchase grain for the purpose of re-selling it. The Commission issued an Order to Show Cause at its March 13, 2007, meeting. On July 9, 2007, staff filed a Motion to Amend the Procedural Schedule, and the Motion was granted at the July 11, 2007, commission meeting. Staff filed a Motion for Summary Judgment on July 27, 2007. LW Sales filed a Brief in Resistance to the Motion for Summary Judgment on August 13, 2007.

TODAY, shall the Commission Grant Staff's Motion for Summary Judgment?

Hydrocarbon Pipeline

1. **HP07-001 In the Matter of the Application of TransCanada Keystone Pipeline, LP for a Permit under the South Dakota Energy Conversion and Transmission Facility Act to Construct the Keystone Pipeline Project. (Staff Analysts: Martin Bettmann/Bob Knadle/Nathan Solem, Staff Attorney: Kara Semmler)**

On April 27, 2007, TransCanada Keystone Pipeline, LP, (Keystone) filed a siting permit application for the South Dakota portion of the Keystone Pipeline Project (Project). The Project will transport crude oil starting in Hardisty, Alberta, Canada and ending in Patoka, Illinois. The proposed 30 inch diameter pipeline will have a nominal capacity of 435,000 barrels of oil per day (bpd) with a possible expansion to 591,000 bpd. The proposed route will enter South Dakota at the North Dakota/South Dakota border in Marshall County and extend in a southerly direction, exiting the state at the South Dakota/Nebraska border in Yankton County. The length of the pipeline in South Dakota will be approximately 220 miles and it will cross the counties of Marshall, Day, Clark, Beadle, Kingsbury, Miner, Hanson, McCook, Hutchinson and Yankton. The Project also includes four pump stations in South Dakota located in Day, Beadle, Miner and Hutchinson counties along with 15 mainline valves with an average spacing of 15 miles between valves. On May 8, 2007, the Commission voted to assess a filing fee not to exceed \$351,100 with an initial deposit of \$8,000; approved the notification process; and approved locations and times for public hearings. At its June 5, 2007, meeting, the Commission voted to extend the intervention deadline to July 10, 2007. On June 6, 2007, commission staff filed a Motion for Release of Information Filed Confidential. Numerous requests for access were filed regarding information filed by Keystone as confidential. Keystone filed redacted documentation on June 15, 2007, which was placed on the PUC website on June 20, 2007. On June 21, 2007, staff filed a letter and recommendations regarding the redacted filings. At its June 12 and July 11, 2007, meetings, the Commission voted to grant party status to all persons who had requested such status. On August 4, 2007, Curt Hohn emailed a request for the landowner list that was filed as confidential by Keystone in its application.

TODAY, how shall the Commission Proceed Regarding Curt Hohn's Request for Confidential Information?

Natural Gas

1. **NG07-014 In the Matter of the Filing by MidAmerican Energy Company for Approval of Tariff Revisions Extending the Monthly Metered Transportation Gas Pilot Projects. (Staff Analyst: Dave Jacobson, Staff Attorney: Karen Cremer)**

On July 23, 2007, MidAmerican Energy filed for approval revised tariff sheets that would extend the existing Monthly Metered Transportation Gas Pilot Project and the Interruptible Monthly Metered Transportation Gas Pilot Project through April 30, 2008. These gas pilot projects are set to expire August 31, 2007. The Iowa Utilities Board is currently reviewing the results of similar programs that are set to expire April 30, 2008, in Iowa and MidAmerican is requesting that the South Dakota programs expire at that time also, so changes, if any, can be filed concurrently in both jurisdictions.

TODAY, shall the Commission Approve the Tariff Revisions?

2. **NG07-016 In the Matter of the Filing by Montana-Dakota Utilities Co. for Approval of Tariff Revisions. (Staff Analyst: Dave Jacobson, Staff Attorney: Kara Semmler)**

On July 25, 2007, Montana-Dakota Utilities Co. filed for approval revised tariff sheets to change the date of the annual Surcharge Adjustment filing required under its Purchased Gas Cost Adjustment Rate 88 and East River Purchased Gas Cost Adjustment Rate 89 from May 1 each year to October 1 each year. The change is requested in order to better match the effects of the withdrawals of gas from storage with the replacement of that gas within the same annual PGA period.

TODAY, shall the Commission Approve the Tariff Revisions?

Pipeline Safety

1. **PS07-002 In the Matter of the Filing of the Investigation of the Natural Gas Incident of March 8, 2007, in Mitchell, South Dakota. (Staff Analyst: Martin Bettmann, Staff Attorney: Kara Semmler)**

On July 13, 2007, the Commission Staff requested that a formal docket be opened into the ongoing investigation into the March 8, 2007, natural gas explosion at 1612 Bridle Drive, Mitchell, South Dakota, to initiate a formal process for review of the investigation report. On July 23, 2007, Arden Lemke d/b/a Lemke Digging & Geothermo Drilling filed a Petition for Intervention. Dennis Burham filed a Petition to Intervene on July 24, 2007. Robert & Jeanne Lorenz filed a Petition for Intervention on July 25, 2007. Ann & Arend Kuyper, Darla & Carl Johnson, and Bailey's Plumbing filed Petitions for Intervention on July 27, 2007. Intervention was granted to all parties at the August 7, 2007, commission meeting. American Family Insurance filed a Petition for Intervention on August 7, 2007.

TODAY, shall the Commission Grant Intervention to American Family Insurance? AND, how shall the Commission Proceed Regarding Expert Testing?

Telecommunications

1. **TC04-213 In the Matter of the Filing by Brookings Municipal Utilities d/b/a Swiftel Communications for Designation as an Eligible Telecommunications Carrier. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer)**

On October 28, 2004, Brookings Municipal Utilities d/b/a Swiftel Communications (Brookings) filed a Petition for Designation as an Eligible Telecommunications Carrier (ETC) for wireless personal communications service (PCS) operations in South Dakota. Brookings requested that it be designated as an ETC in portions of its FCC authorized service area. For the local exchange carrier wire centers that are only partially covered by Brookings' authorized service area, Brookings requested that the Commission designate as an ETC the portion of the wire center where Brookings is authorized to provide service. For wire centers which overlap into South Dakota, Brookings requested that the Commission designate Brookings in the portion of those wire centers that are within South Dakota. Brookings was granted ETC status at the January 17, 2006, commission meeting. On August 9, 2007, Brookings filed a Motion to modify their ETC Designation Order to have its annual compliance filing and its ETC annual certification filings coincide on the date of the annual certification.

TODAY, shall the Commission Re-Open the Docket? AND, shall the Commission Approve the Requested Modifications?

2. **TC06-191 In the Matter of EchoStar Satellite LLC Owning the Trademark Dish Network, Echosphere, LLC's Failure to Register as a Telemarketers and the**

Solicitations they made to those Registered on the Do Not Call List. (Staff Attorney: Kara Semmler)

On November 15, 2006, Commission Staff filed a Motion for an Order to Show Cause due to Dish Network's failure to register as a telemarketer and the solicitations it made to individuals registered with the South Dakota Do Not Call Registry. Upon further investigation, Staff determined that Dish Network is a subsidiary of EchoStar Satellite, LLC (EchoStar). The Commission added EchoStar as a party and issued an Order to Show Cause at its December 6, 2006, meeting. On April 13, 2007, staff filed a Motion for Continuance of Discovery and to Add Additional Parties. The Motion was granted at the April 24, 2007, commission meeting. On July 24, 2007, the parties filed a Joint Motion for Delay. EchoStar filed a Motion for Summary Judgment on July 27, 2007. The Motion for Delay was granted at the August 7, 2007, commission meeting. On August 15, 2007, staff filed a brief in reply to the Motion for Summary Judgment. A reply brief was filed by EchoStar on August 21, 2007.

TODAY, how shall the Commission Proceed Regarding EchoStar's Request for Summary Judgment?

- 3. TC07-057 In the Matter of the Application of Midcontinent Communications for Approval to Expand its Certificate of Authority to Provide Local Exchange Service in the Gayville Rural Service Area. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer)**

On May 29, 2007, Midcontinent Communications (Midcontinent) filed a petition to amend its certificate of authority to provide local exchange service in the rural exchange area of Gayville, South Dakota. "Among other things, this application is a competitive response to the provision of video programming in the geographical area by the incumbent carrier, PrairieWave Community Telephone, Inc....Section 47 U.S.C. 251(f)(1)(C) is applicable to the application. As such, the exemption provided by 47 U.S.C. 251(f) (1) (A) does not apply to PrairieWave."

TODAY, shall the Commission Approve Midcontinent Communications' Application to Expand its Certificate of Authority?

- 4. In the Matter of the Request for Certification Regarding the Use of Federal Universal Service Support in Dockets TC07-059, TC07-065, and TC07-068.**

- TC07-059 In the Matter of the Request of Qwest Corporation for Certification Regarding its Use of Federal Universal Service Support. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer)**

On May 30, 2007, Qwest Corporation (Qwest) provided information constituting Qwest's plan for the use of its federal universal service support and to otherwise verify that Qwest will use all federal universal service support received in a manner that is intended.

- TC07-065 In the Matter of the Request of WWC License LLC for Certification Regarding its Use of Federal Universal Service Support. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer)**

On May 31, 2007, WWC License LLC (WWC) provided information constituting WWC's plan for the use of its federal universal service support and to otherwise verify that WWC will use all federal universal service support received in a manner that is consistent with the federal universal

service provisions of 47 U.S.C. Section 254.

TC07-068 In the Matter of the Request of Brookings Municipal Telephone d/b/a Swiftel Communications for Certification Regarding its Use of Federal Universal Service Support. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer)

On June 1, 2007, Brookings Municipal Telephone d/b/a Swiftel Communications (Swiftel) provided information constituting Swiftel's plan for the use of its federal universal service support and to otherwise verify that Swiftel will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

TODAY, shall the Commission Provide a Certification to the Federal Communications Commission and to the Universal Service Administration Company Regarding the Plan for the Use of Federal Universal Services Support as Proposed in Each of the Above Dockets?

5. TC07-086 In the Matter of the Filing by Citizens Telecommunications Company of Minnesota, LLC for a Waiver of ARSD 20:10:32:56. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer)

On July 27, 2007, Citizens Telecommunications Company of Minnesota, LLC (Citizens) filed a waiver of the Commission's ETC filing requirements pursuant to ARSD section 20:10:32:56, on the ground that the reporting requirements in support of ETC certification are unduly burdensome and unnecessary. Citizens' study area consists primarily of a geographic area contained within the state of Minnesota. Citizens' service area in South Dakota consists of the West Jasper exchange. West Jasper is the rural portion of an exchange where the larger portion of the exchange and the central office is located in Minnesota. Citizens has no wire centers in South Dakota. For companies such as Citizens which have a very small portion of their overall study area in South Dakota, the requirement of certifying the use of universal service fund monies in accordance with the requirements of ARSD sections 20:10:32:52 - 20:10:32:54 is unduly burdensome and unnecessary for the Commission to certify that Citizens is using federal high cost support for its intended purposes. Because its study area is largely contained within the state of Minnesota and because it will comply with the Minnesota Public Utilities Commission requirements for ETC certification, Citizens requests that it be allowed to file a copy of its Minnesota ETC certification with the SDPUC; and that the SDPUC accept such filings as sufficient to make the determination as to include Citizens on the list of certified carriers it provides to the FCC and the USAC on or before October 1 of each year.

TODAY, shall the Commission Grant the Waiver of ARSD 20:10:32:56? OR, how shall the Commission Proceed?

6. TC07-087 In the Matter of the Petition of Qwest Corporation for Waiver of Utilization Threshold Requirement in the Sioux Falls Rate Center. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer)

On August 3, 2007, Qwest Corporation (Qwest) filed a request with the Commission to waive the NeuStar Pooling Administrator's utilization threshold requirements in the Sioux Falls rate center to meet a specific customer's need in the community. Qwest submitted a request for 10,000 numbers (full NXX code) in the 605-N12-XXXX range to The Pooling Administrator on July 25, 2007. In order for the request to be approved, Qwest requests a waiver of the current usage threshold for new numbering requests.

TODAY, shall the Commission Grant the Petition for Waiver?

7. TC07-088 In the Matter of the Filing for Approval of an Addendum to an Interconnection Agreement between Qwest Corporation and DIECA Communications, Inc. d/b/a Covad Communications Company. (Staff Attorney: Kara Semmler)

On August 7, 2007, the Commission received a filing for approval of a Local Number Portability Amendment to the Interconnection Agreement between Qwest Corporation and DIECA Communications, Inc. d/b/a Covad Communications Company for the State of South Dakota.

TODAY, shall the Commission Approve the Addendum to the Agreement?

8. TC07-089 In the Matter of the Filing by Sancom, Inc. d/b/a Mitchell Telecom for Approval of Revisions to its Switched Access Services Tariff. (Staff Analyst: Keith Senger, Staff Attorney: Karen Cremer)

On January 7, 2007, the Commission issued an order approving Sancom, Inc. d/b/a Mitchell Telecom's switched access services tariff. On August 1, 2007, Sancom filed minor text corrections to that tariff.

TODAY, shall the Commission Approve the Tariff Revisions?

Announcements

1. The next regularly scheduled Commission meeting will be held September 11, 2007, at 9:30 a.m. in Room 412, State Capitol Building, Pierre, SD.
2. Commission meetings are scheduled for September 25 and October 9, 2007.
3. The PUC offices will be closed Monday, September 3, 2007, in observance of Labor Day.
4. The PUC will host a wireless conference, "Connecting South Dakota: Wireless Technology," Sept. 18, 2007, at the Sioux Falls Convention Center

Heather K. Forney
Deputy Executive Director
heather.forney@state.sd.us
August 22, 2007